IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 164 of 2004(T)

AGAINST THE ORDER IN IA.1347 & 1508/2003 IN OS.245/1999 of MUNSIFF COURT, TIRUR

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PETITIONER:

MUSLIM VEETTIL KOTTINLUNGAL UMMUKULSU, W/O.HYDRU, VETTAM PALLIPRAM, TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNANUNNI

RESPONDENTS:

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1. **MULAKU PARAMBIL MUHAMMED, S/O.UNNEEN, PERINTHALLUR, VETTAM PALLIPRAM, TIRUR TALUK, MALAPPURAM DISTRICT.**

2. **AMINAKUTTY @ BEEVI, W/O.THEVAYI MARAKKAR, PERINTHALLUR, TRIPANGODE, TIRUR TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI.M.V.BOSE for R1
SRI.VINOD MADHAVAN
SMT.NISHA BOSE
SRI.S.V.BALAKRISHNA IYER for R2
SRI.HARISH R. MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.164/2004 T

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.245/99 DTD. 14/09/1999 BEFORE THE MUNSIFF COURT, TIRUR.**

EXT.P2: **COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST RESPONDENT IN O.S.245/99 DTD. 7/04/2000.**

EXT.P3: **OCPY OF THE IA.1347/2003 DTD. 14/07/2003 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, TIRUR.**

EXT.P4: **COPY OF THE I.A.1509/03 DTD. 4/08/2003 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, TIRUR.**

EXT.P5: **COPY OF THE ORDER PASSED BY THE MUNSIFF COURT, TIRUR IN I.A.NO.1347/03 DTD. 20/11/2003.**

EXT.P6: **COPY OF THE ORDER PASSED BY THE MUNSIFF COURT, TIRUR IN I.A.1509/03 DTD. 20/11/2003.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 164 of 2004

Dated this the 10th day of July , 2007

JUDGMENT

Ext.P5 order dismissing an application for joint trial of the suit (O.S.245/99) filed by the petitioner along with another suit (O.S.225/1999) filed by the first respondent herein in which the 2nd respondent is also is a defendant is under challenge in this writ petition under Article 227 of the Constitution. Ext.P6 by which the learned Munsiff dismissed an application for amendment of the plaintiff is also under challenge. On behalf of the 2nd respondent an adjournment is sought for, but I am not inclined to grant the same since the first respondent is present before me through counsel and I do not notice any conflict between the interests of the first respondent and the 2nd respondent.

2. I shall first of all examine the correctness of Ext.P5. It is almost clear that there is identity between the properties

involved in the suit and that there is at least partial identity of the parties in both the suits though the 2nd respondent is not a party in O.S.245/1999. The nature of the petitioners' claim in both the suites is same that they have got an easement of way over a controversial pathway. Having regard to these circumstances, I find merit in the submission of the learned counsel for the petitioner that common issues will arise for consideration in both the suits and the nature of the evidence to be adduced also will to a considerable extent be same. I cannot agree with the view of the learned Munsiff that there is no ground at all for joint trial of the two suits. I am of the view that on considerations of convenience of the court, the parties and avoidance of possibility of conflicting findings, the application for joint trial should have been allowed by the learned Munsiff.

3. Ext.P6 is an order passed on an application for amendment of the plaint. A detailed counter affidavit has been filed in the writ petition by the first respondent to justify the impugned order and to substantiate the objection which the first respondent had filed to the amendment application. According to Sri.Vinod Madhavan, the learned counsel for the first respondent,

the case originally pleaded by the petitioner was that the boundary between the two properties was marked by a compound wall which was allegedly demolished by the respondents. Now the case which is sought to be introduced through the proposed amendment is that it was not a compound wall which wass situated on the boundary but it was a natural boundary marked by a row of trees. Sri.Vinod Madhavan submits that Ext.P6 and the request for amendment are are made on the basis of something which the Commissioner had not actually reported. Not that I do not find any merit at all in the above submission of Sri.Vinod Madhavan. But at the same time, I fail to see how it can be said that the nature and character of the suit will change by allowing the proposed amendment. According to me, the proposed amendment may be necessary for resolving the surviving controversies between the parties. The law is that, all amendments which are necessary for resolving the real controversy in the suit provided the same does not cause any prejudice to the adversery in the litigation or results in injustice, can be allowed. Sri.Vinod Madhavan further contended that the proposed amendment may

enable the petitioner to get over the bar of limitation which had already set in and will enable the petitioner to get away from the effect of admissions already made in the original plaint. I am of the view that the learned Munsiff could have allowed the application taking care of the above contentions of the first respondent.

3. Result of the above discussion is that setting aside Exts.P5 and P6, the following orders will be issued.

i). I.A.No.1347/2003 will stand allowed and the court will try the present suit and O.S.225/1999 jointly treating the present suit as the leading suit.

I.A. 1509/2003 for amendment will also stand allowed subject to the following extent and subject to the following conditions:

a). I.A. will stand allowed to the extent of permitting the petitioner to incorporate the additional pleadings which he seeks to incorporate through I.A. In other words, the petitioner will not be permitted to delete any of the existing pleadings in the suit.

b). The order of amendment will become operative only from the date of the amendment application i.e. prospectively.

c). The petitioner will have to pay a sum of Rs.1,000/- (Rs.One Thousand only) to respondents 1 and 2 either directly or through their counsel in this court within three weeks from today. failing which Ext.P6 will stand confirmed. Once cost is paid and the directions in this judgment becomes operative, the court below shall afford an opportunity to respondents 1 and 2 to raise additional pleadings if they so choose and thereafter re list the suits for trial in the earliest available special list and dispose of both the suits at the learned Munsiff's earliest.

The writ petition is disposed of with the above directions.

PIUS C. KURIAKOSE,
JUDGE.

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